

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DIGITAL IMPACT, INC.,)
)
)
Plaintiff(s),)
)
v.)
)
BIGFOOT INTERACTIVE, INC.,)
)
)
)
Defendant(s) .)
_____)

No. C05-0636 SBA (BZ)

**SETTLEMENT CONFERENCE
ORDER - PATENT CASE**

The above matter was referred to me for settlement purposes.

On December 5, 2005, I conducted a telephonic hearing at which both sides were represented by counsel. With the consent of the parties and good cause appearing, **IT IS HEREBY ORDERED** that no later than **January 13, 2006, Kevin Johnson**, the Senior Vice President of Products and Marketing for plaintiff, Digital Impact and **Al Diguido**, CEO and President of defendant Bigfoot Interactive Inc., shall meet in person, preferably outside the

1 presence of counsel, to discuss a resolution of this dispute.
2 They shall meet in **San Francisco, California** or in any other
3 place to which they both agree. The principals are urged to
4 explore a creative, business resolution of their dispute. If
5 the case settles, the parties are to notify the Court
6 immediately.

7 Each party shall provide the other informally,
8 expeditiously and pursuant to Federal Rule of Evidence 408 with
9 all information reasonably needed to further the progress of
10 the settlement negotiations. Confidential information may be
11 provided subject to a protective order.

12 If there is no settlement, it is **ORDERED** that a telephonic
13 conference is scheduled for **January 18, 2006 at 3:45 p.m.**, to
14 discuss the status of the negotiations. Counsel for plaintiff
15 shall get counsel for defendant on the line and call chambers
16 at **415-522-4093**. The principals need not participate.

17 It is further **ORDERED** that a Settlement Conference is
18 scheduled for **February 24, 2006, at 9:00 a.m.**, in Courtroom G,
19 15th Floor, Federal Building, 450 Golden Gate Avenue, San
20 Francisco, California 94102. Counsel who will try the case
21 shall appear at the Settlement Conference with the party
22 principals who met earlier. The negotiations will be
23 principally among the party principals in my presence.

24 Each party shall prepare a Settlement Conference
25 Statement, which must be served on opposing counsel and lodged
26 (not faxed) with my chambers no later than seven calendar days
27 prior to the conference. The Statement shall **not** be filed with
28 the Clerk of the Court. The Statement **may** be submitted on CD-

1 ROM with hypertext links to exhibits. Otherwise, the portion
2 of exhibits on which the party relies **shall** be highlighted.
3 The Settlement Conference Statement shall not exceed ten pages
4 of text and twenty pages of exhibits and shall include the
5 following:

6 1. A brief statement of the facts of the case.
7 2. A brief statement of the claims and defenses
8 including, but not limited to, statutory or other grounds upon
9 which the claims are founded.

10 3. A summary of any related litigation.

11 4. A summary of the proceedings to date and any pending
12 motions.

13 5. An estimate of the cost and time to be expended for
14 further discovery, pretrial and trial.

15 6. The relief sought, including an itemization of
16 damages.

17 7. The parties' position on settlement, including
18 present demands and offers and a history of past settlement
19 discussions. The Court's time can best be used to assist the
20 parties in completing their negotiations, not in starting them.
21 So there is no confusion about the parties' settlement
22 position, plaintiff must serve a demand in writing no later
23 than fourteen days before the conference and defendant must
24 respond in writing no later than eight days before the
25 conference. The parties are urged to carefully evaluate their
26 case before taking a settlement position since extreme
27 positions hinder the settlement process.

28 Along with the Statement each party shall lodge with the

1 court a document of no more than three pages containing a
2 **candid** evaluation of the parties' likelihood of prevailing on
3 the claims and defenses, and any other information that party
4 wishes not to share with opposing counsel. The more candid the
5 parties are, the more productive the conference will be. This
6 document shall not be served on opposing counsel.

7 It is not unusual for conferences to last three or more
8 hours. Parties are encouraged to participate and frankly
9 discuss their case. Statements they make during the conference
10 will not be admissible at trial in the event the case does not
11 settle. The parties should be prepared to discuss such issues
12 as:

- 13 1. Their settlement objectives.
- 14 2. Any impediments to settlement they perceive.
- 15 3. Whether they have enough information to discuss
- 16 settlement. If not, what additional information is needed.
- 17 4. The possibility of a creative resolution of the
- 18 dispute.

19 The parties shall notify chambers immediately if this case
20 settles prior to the date set for settlement conference.
21 Counsel shall provide a copy of this order to each party who
22 will participate in the conference.

23 Dated: December 14, 2005

24 
25 Bernard Zimmerman
26 United States Magistrate Judge
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